

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: SAMAIN, Eric et al.
Title: METHOD FOR PRODUCING
OLIGOPOLYSACCHARIDES
Appl. No.: 10/019,954
Filing Date: 05/24/2002
Patent No.: 7,521,212
Grant Date: 04/21/2009
Examiner: Rebecca E. Prouty
Art Unit: 1652
Confirmation Number: 6242

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 04/21/2009 as U.S. Patent No. 7,521,212.

The Patent Office determined that the patent was entitled to 264 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 839 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1,217 days
(b) Total Applicant delay:	378 days
Final PTA Determination:	839 days

Applicants therefore respectfully request that the patent be accorded 839 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date 12-MAY-2009

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4059
Facsimile: (202) 672-5399

By 

Rouget F. Henschel
Attorney for Applicant
Registration No. 39,221

Docket Number: 065691-0267
 Application Number: 10/019954
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	07/07/1999	-915		
Edit Delete	International Filing Date	07/07/2000	-549		
	PCT National Stage Commencement Date	01/07/2002	0		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	05/24/2002	137		
	14 month From Application date	07/24/2003	563		
Edit Delete	Restriction Requirement	10/01/2004	998	435	
	Restriction Requirement + 3 months	01/01/2005	1,090		
	3 Year Period Starts	01/07/2005	1,096		
Edit Delete	Restriction Requirement Response Received at PTO	01/13/2005	1,102		12
Edit Delete	Non-Final Office Action	05/05/2005	1,214		
	Non-Final Office Action + 3 months	08/05/2005	1,306		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/05/2005	1,367		61
Edit Delete	Non-Final Office Action	12/29/2005	1,452		
	Non-Final Office Action + 3 months	03/29/2006	1,542		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/30/2006	1,604		62
Edit Delete	Final Office Action	08/28/2006	1,694		
	Final Office Action + 3 months	11/28/2006	1,786		
Edit Delete	Final Office Action Response Received at PTO	12/28/2006	1,816		
Edit Delete	Advisory Action	01/31/2007	1,850		
Edit Delete	Request For Continued Examination	02/28/2007	1,878	782	92
	3 Year Period Stopped	02/28/2007	1,878		
Edit Delete	Non-Final Office Action	05/18/2007	1,957		
	Non-Final Office Action + 3 months	08/18/2007	2,049		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/18/2007	2,110		61
Edit Delete	Non-Final Office Action	01/09/2008	2,193		
	Non-Final Office Action + 3 months	04/09/2008	2,284		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	07/08/2008	2,374		90
Edit Delete	Notice of Allowance	10/30/2008	2,488		

Edit Delete	Issue Fee Paid	01/28/2009	2,578		
Edit Delete	Patent Grant Date	04/21/2009	2,661		
			Totals:	1,217	378
			PTA:	839	